

CONFIDENTIAL
ATTORNEY-CLIENT PRIVILEGED
INVESTIGATIVE REPORT

Client: The City of Richmond
Subject: Officer Wallace Jensen
Investigator: J.P. Badel (PI #28217)
Renne Sloan Holtzman Sakai LLP
Date: February 27, 2015

Submitted by



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I. INTRODUCTION

The City of Richmond ("City") retained J.P. Badel ("Investigator"), a licensed private investigator with the law firm of Renne Sloan Holtzman Sakai LLP ("RSHS"), to conduct a confidential administrative investigation regarding the use of deadly force by Officer Wallace Jensen upon Richard Pedro Perez on September 14, 2014 at Uncle Sam's Liquor Store, 3322 Cutting Blvd, Richmond, California. The City elected to have this matter investigated administratively in compliance with Richmond Police Department ("RPD") policy Section 310 -- Officer Involved Shootings.

The Richmond Police Department received six formal personnel complaints from citizens against Jensen alleging that he used excessive force upon Perez on September 14, 2014. California Penal Code 832.5 and Richmond Police Department Policy Section 1020 -- Personnel Complaints, require that formal personnel complaints of this nature are investigated.

II. SUMMARY OF FINDINGS

The allegations against Jensen are **EXONERATED**. As a result of this investigation and the reasons set forth below, the Investigator determined that Jensen utilized deadly force appropriately upon Perez based upon Perez's aggressive conduct. The investigation disclosed that Jensen's actions were justified and/or proper under the City's policy.

III. INVESTIGATIVE PROCEDURE

The Investigator obtained evidence from witness interviews conducted by the Criminal Investigators, this Investigator, testimony at a Coroner's Inquest and document review. On December 4, 2014 the Investigator sent letters, via United States Mail, to the following ten witnesses: [REDACTED]

[REDACTED] The only witnesses that responded to the Investigator's letter and were interviewed were [REDACTED]. The letter sent to [REDACTED] was "Returned to Sender. Not known, Unable to Forward". The Investigator discovered [REDACTED] as a potential witness [REDACTED]. The interviews were digitally recorded and a CD containing those interviews has been attached as the final exhibit in this report (Exhibit 27).

A. Witnesses Interviewed

The interviews were digitally recorded and the recordings are available upon request.

No.	Witness	Position	Date of Interview	Conducted By
1	[REDACTED]	Citizen	09/14/14	RPD Officer Benjamin Therriault
2	[REDACTED]	Citizen	09/14/14	RPD Det. Eric Garcia and Contra Costa County District Attorney Inspector Darryl Holcomb
3	[REDACTED] [REDACTED]	Citizen	09/14/14	RPD Officer Khoa Nguyen
4	[REDACTED] [REDACTED]	Citizen	09/14/14	RPD Det. Eric Garcia and CCCDA Inspector Darryl Holcomb
5	[REDACTED] [REDACTED]	Citizen	09/14/14	RPD Det. Eric Haupt and CCCDA Inspector Dave Lewellyn
6	[REDACTED] [REDACTED]	Citizen	09/14/14	RPD Detective Hector Esparza and CCCDA Inspector Jeff Soler
7	[REDACTED]	Citizen	01/05/15	RSHS Investigators J.P. Badel and Lynn Malaspino-Badel

8	██████████	Citizen	09/14/14	RPD Officer Ruben Mungia
9	██████████	Citizen	09/14/14	RPD Det. Eric Haupt and CCCD A Inspector Dave Lewellyn
10	██████████	Citizen	09/14/14	RPD Officer Loren Bates
11	██████ ██████████ ██████	Citizen	09/14/14	RPD Officer Loren Bates
12	██████ ██████████ ██████	Citizen	09/14/14	RPD Det. Eric Haupt and CCCD A Inspector Dave Lewellyn
13	██████ ██████████ ██████	Citizen	01/05/15	RSHS Investigators J.P. Badel and Lynn Malaspino-Badel
14	██████████ ██████	Citizen	09/14/14	RPD Officer Ruben Mungia
15	██████████ ██████	Citizen	09/14/14	RPD Det. Eric Haupt and CCCD A Inspector Dave Lewellyn
16	██████████	Citizen	09/14/14	RPD Det. Eric Garcia and CCCD A Inspector Darryl Holcomb
17	██████████	Citizen ██████	10/02/14	RPD Sgt. Eric Smith

18	Arnold Josselson	Physician	12/10/14	Contra Costa County Coroner's Inquest testimony; Matthew Guichard
19	Louie Tirona	Police Lieutenant	01/14/15	RSHS Investigator J.P. Badel
20	Wallace Jensen	Police Officer	09/14/14	RPD Detective Hector Esparza and CCCDA Inspector Jeff Soler
21	Wallace Jensen	Police Officer	12/10/14	Contra Costa County Coroner's Inquest testimony; Matthew Guichard
22	Wallace Jensen	Police Officer	01/14/15	RSHS Investigator J.P. Badel and RPD Lt. Brian Dickerson

B. Documents Reviewed

The Investigator reviewed and relied on the following documents in reaching the findings set forth below.

Ex.	Document Description
1	Richmond Police Department Policy 300 – Use of Force
2	Richmond Police Department Policy 308 – Control Devices and Techniques
3	Electronic mail from Richmond Police Deputy Chief Allwyn Brown dated October 7, 2014 amending Richmond Police Department Policy 308 – Control Devices and Techniques
4	Richmond Police Department Policy 309 – Conducted Energy Device
5	Richmond Police Department Policy 310 – Officer Involved Shooting

6	Richmond Police Department Policy 312 – Firearms and Qualifications
7	Richmond Police Department Police 318 – Canine Program
8	Richmond Police Department Policy 1046 – Uniform Regulations
9	Richmond Police Department/Contra Costa County District Attorney Criminal Investigation; Case #2014-00013481
10	Shotspotter Detailed Forensic Report
11	Contra Costa County Coroner's Inquest transcript; 2014-3949; prepared by Julie Vasta
12	Memorandum from Contra Costa County Deputy District Attorney Barry Grove to Richmond Police Chief Christopher Magnus dated January 20, 2015 regarding the Death of Richard Perez III
13	Richmond Police Department Training File for Officer Wallace Jensen
14	Richmond Police Department Perishable Skills Program; Tactical Firearms Training Syllabus for 2014
15	Memorandum from Richmond Police Lt. Louie Tirona dated April 7, 2014 regarding Officer Wallace Jensen passing firearms training and qualification on April 3, 2014
16	Memorandum from Richmond Police Lt. Louie Tirona and Sgt. T. Mollenbernd dated August 18, 2014 regarding Firearms Training Syllabus and Officer Wallace Jensen documentation of monthly training/qualification
17	Memorandum from Richmond Police Sgt. T. Mollenbernd dated January 21, 2013 regarding Firearms Training Syllabus and Officer Wallace Jensen documentation of monthly training/qualification
18	Documentation of Officer Wallace Jensen's qualification dated September 28, 2012
19	Richmond Police Department Personnel Complaint forms filed by [REDACTED] [REDACTED] [REDACTED] against Officer Wallace Jensen

20	Letters from Investigator Badel to witnesses to schedule an appointment for interview
21	Memorandum from Richmond Police Lieutenant Brian Dickerson to Richmond Police Officer Wallace Jensen dated December 23, 2014 providing notification of interview with Investigator Badel
22	Miranda and Lybarger admonishments for Officer Wallace Jensen dated January 14, 2015
23	Admonishment and interview questions for Richmond Police Officer Wallace Jensen
24	Admonishment and interview questions for [REDACTED]
25	Admonishment and interview questions for [REDACTED]
26	Admonishment and interview questions for Richmond Police Lt. Louie Tirona
27	CDs of Digitally Recorded Interviews
28	Richmond Police Department Radio Traffic Channel 1 and Channel 2
29	Closed Circuit Television Surveillance Video from Uncle Sam's
30	Video of the incident from [REDACTED] cell phone

IV. APPLICABLE POLICIES

The following applicable Richmond Police Department policies are located in the Appendix section of this report:

- Section 300 – Use of Force
- Section 308 – Control Devices and Techniques
- Section 309 – Conducted Energy Devices
- Section 310 – Officer Involved Shooting
- Section 312 – Firearms and Qualifications
- Section 318 – Canine Program

V. STATEMENT OF FACTS

A. Uncle Sam's Liquor Store

Uncle Sam's is a liquor store located at 3322 Cutting Blvd. in the City of Richmond, California. The store is located on the south side of the street between Stege Avenue and Carlson Blvd. Directly to the west of Uncle Sam's is Nancy's Nail Salon, 3320 Cutting Blvd and directly east is Taqueria Chavinda, 3330 Cutting Blvd. Taqueria Chavinda is on the corner of Cutting Blvd. and Stege Avenue.

Uncle Sam's had experienced problems with citizens loitering and consuming alcohol in front of the store leading up to this incident. There are signs posted in front of the store prohibiting loitering, consuming alcohol, begging and solicitation and that offenders are subject to fines. In 2013 and January 2014 Officer Jensen addressed the problem with persistence by contacting individuals in front. His practice was to drive by the store once and find out who was in front of the store. If loiterers were present, he would make contact with them to find out who they were. He would ask them to move on and told them that if he saw them in front of the store again he would take further action, up to and including arrest. This method of policing was effective and the problem diminished and was non-existent between February 2014 and August 2014.

The loitering problem began to surface again in September 2014. During briefing on 09/13/14 Jensen was asked by Lieutenant Whitney, during the course of his shift for that weekend, to drive by Uncle Sam's to see if anyone was loitering in front of the store. If so, Jensen was to make contact with them and make any arrests if possible or let people know that the loitering was not tolerated and that he would take any enforcement action necessary.

B. Officer Wallace Jensen

Officer Jensen has been a Richmond Police Officer for seven years. He is assigned to patrol operations as a canine officer and works the "junior graveyard" shift, which is Friday through Monday between 9:30 PM and 7:30 AM. He is assigned to "Beat 3" which is in the southern district of the City and encompasses Uncle Sam's Liquor Store. A beat is an area of the City that establishes borders for responding to calls for service and officer staffing. The borders of beat 3 are Ohio Avenue to the City of El Cerrito from north to south and Carlson Blvd to San Pablo Ave. east to west.

On 9/14/14 Jensen was wearing a standard Battle Dress Uniform (BDU) for the Richmond Police Department and clearly identifiable as a Richmond Police Officer. He uses a nylon duty belt which holds his firearm. He is right handed and he uses a Wilson Combat CQB 1911 firearm.

Jensen was driving a black and white Richmond Police car, #25, and was utilizing the call sign "One King Three" (1K3) (Exhibit 28).

C. Richard Pedro Perez

Richard Perez was a twenty four year old male who had several encounters with law enforcement leading up to this incident (Exhibit 9).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

These events show a pattern of Perez's involvement and poor judgment with alcohol and weapons in which law enforcement had to intervene.

D. Summary of Incident

On 09/13/14 Perez arrived at his friend's [REDACTED] residence at approximately 4:00 PM. According to [REDACTED], Perez was intoxicated and his speech was "slurred" and he was "stumbling" as he walked. At approximately 7:00 PM Perez and [REDACTED] walked to Uncle Sam's because Perez wanted to obtain alcohol on a credit basis. Through this investigation it became evident that Perez was a frequent patron of Uncle Sam's. Upon their arrival Perez began begging for money outside of Uncle Sam's. While in the store Perez became involved in a verbal altercation with a store employee about obtaining alcohol on credit. [REDACTED] told Perez to leave because he felt Perez would not want any trouble. [REDACTED] said, "He [Perez] was drunk,

wasn't listening to me" and that he should have just left without Perez. Nonetheless, Perez left with [REDACTED] and they returned to [REDACTED] residence.

[REDACTED] is a frequent patron of Uncle Sam's and knows Perez. She met him at the liquor store six to nine months before the incident. She told the criminal investigators that she saw Perez between 6:00 PM and 7:00 PM at the store on the night of the shooting. She said he had been drinking and was trying to get alcohol from the store on credit. She said that "when he gets drunk, he gets aggressive" and vocal.

While at [REDACTED] residence, Perez and [REDACTED] ate dinner and consumed beer and watched movies. [REDACTED] said Perez was very loud during the evening and wanted more alcohol. According to [REDACTED] at approximately 11:00 PM Perez wanted to return to Uncle Sam's to obtain more alcohol. Once at the store, Perez walked inside while [REDACTED] remained outside. It is unclear what [REDACTED] did or where he went at this point.

Inside Uncle Sam's, Perez was causing a disturbance. [REDACTED], a clerk at Uncle Sam's, said that Perez was intoxicated and came to him in the store and asked him for liquor because he did not have any cash. Perez left the store and returned three times. On the last occasion [REDACTED] was in the back of the store and walked to the front of the store because Perez was bothering the employees.

[REDACTED] is a frequent patron of Uncle Sam's. Each night after work she stops by the store to purchase something to eat and drink. On 09/14/14 she stopped at Uncle Sam's at approximately 12:15 AM. She obtained her items to purchase and walked to the register at the front of the store. Perez walked up behind her and "did something" behind her and then "came to her side". She said he was "acting weird" and he leaned toward her which made her feel like he was in her personal space. As the sales clerk was helping [REDACTED] the other sales clerk was telling Perez to leave the store. [REDACTED] surmised that something happened earlier at the store involving Perez and they wanted him to leave. She said when he spoke to the clerk, Perez sounded drunk, on drugs or mentally disabled. His speech was slurred and mumbled and he was belligerent.

Jensen made it a point to drive to Uncle Sam's at some point during his shift on 09/13/14. At approximately 12:15 AM on 09/14/14 he advised dispatch he would be on a "10-59" which is a self-initiated "security check". He did not ask for a back-up. He parked his patrol vehicle around the corner of Uncle Sam's in the 500 block of Stege Ave. so that if there was anybody loitering in front of the store he would catch them by surprise. He left his canine, Axel #178, in the car.

Jensen exited his vehicle and walked west onto Cutting Blvd. from Stege Ave. At this point there was no one in front of Uncle Sam's, but he did notice four individuals just past the store

toward Carlson Blvd. Jensen passed by the front door of Uncle Sam's and as he got closer to the individuals he made eye contact with the lone female. She told Jensen that they were leaving and she told the remaining people in the group that they had to leave. All four got up and left.

Jensen turned around and began walking eastbound on Cutting Blvd. His intention was to walk back to his patrol car and leave in order to continue with his patrol duties for the remainder of his shift. As he reached the entry door to Uncle Sam's [REDACTED], said "Excuse me officer". "This guy is causing problems" as he was pointing into the store at Perez.

Jensen asked Perez to come outside of the store and to sit on the curb. Perez complied with Jensen's request and said something unintelligible. Jensen noticed Perez's speech was slurred and was not sure who Perez was speaking to or what he was saying. He said Perez had an unsteady gait and was swaying from side to side. Jensen walked around Perez, as he sat on the curb, and stood in front of him and took out a field interview (FI) card.

Jensen said Perez's hands were in front of him and that he was animated. Perez asked Jensen if he was being detained or if he was under arrest. Jensen told him he was being detained. Perez next told Jensen that he had just been arrested the day before and "that Chinese mother fucker took my ID and all my stuff and didn't give it back". Jensen assumed he was referring to Richmond Police Officer Matsui who also works beat 3, but on swing shift.

Jensen got on his police radio, utilizing his lapel mic, and asked to speak with Matsui on Channel 2, their non-emergency channel (Exhibit 28). Channel 1 is monitored by dispatch while patrol officers and detectives use that channel as their primary communication channel. Channel 2 has a dispatcher assigned to it and it is used for running wants and warrant checks, vehicle registration checks and general information exchange.

Matsui's call sign was Three Lincoln Thirteen (3L13). Both officers (Jensen and Matsui) switched from Channel 1 to Channel 2 on their radios (Exhibit 28). Jensen asked Matsui if he was near Uncle Sam's liquor store and Matsui said he was at the Police Department booking evidence. Jensen told Matsui he acknowledged his transmission, and as he was speaking with Matsui, Perez stood up and started to walk away from Jensen westbound on Cutting Blvd. toward Carlson Blvd. Jensen told the criminal investigators that he told Perez to sit back down, but Perez said "screw this, I am leaving" or something to that effect. During the Coroner's Inquest Jensen said he recalled Perez replying by saying "Fuck this. I'm out of here. I'm done" (Exhibit 11).

Jensen was behind Perez and grabbed a hold of his right arm and Perez pulled away from him. Perez was facing away from Jensen and Jensen next grabbed the collar of Perez's shirt with his left hand and stuck his leg out and pulled Perez back toward him. This maneuver is referred to as a "reverse reap take down". Perez fell to the ground and Jensen fell on top of Perez on the

sidewalk in front of Uncle Sam's. Perez's head was closer to the building and his feet were toward the street. Perez was on his back and Jensen was on top of Perez, on his knees, trying to gain control of Perez's arms. His intention was to put Perez in another control hold and put him into handcuffs to stop him from fighting. Jensen said "I was struggling to gain control of his hands". Jensen told Perez to "stay on the ground" and "stop resisting". Jensen said this to Perez "a bunch of times" and does not recall Perez saying anything back to him.

Jensen said "At some point he (Perez) started to get up and, you know, I was pushing him back down". Jensen reached up to his lapel mic with his left hand to ask for a cover unit by saying "route me one" while he had his right hand on Perez's right shoulder (Exhibit 28). Jensen did not hear a response and later discovered that he was still on Channel 2. The weight of Jensen's torso was over Perez's body. While he was asking for a cover unit, Perez's legs were bent and his feet were planted on the ground. Perez began to roll and tried to stand up. Jensen could feel Perez's knees on his side as he was struggling to keep him down. Jensen put his left hand back down and was struggling to gain control of Perez. Perez's resistance caused Jensen to reengage Perez's arms.

Jensen does not know how long he and Perez were struggling at this point but he felt it was a long time and he was starting to get tired. Perez pushed Jensen off of him and was able to partially stand up, but still bent over. He and Perez were face to face and Jensen performed a "front reap throw" or "judo throw by grabbing onto the subjects arm or the sleeve of his shirt". Jensen stuck his leg in front of Perez and threw him over his hip. Perez fell on his back and Jensen landed on top of him. Jensen said "He was able to grab a hold of my left arm. I was struggling to gain control. He grabbed my left arm with his right hand and I was struggling to gain control of his left hand or arm. He was trying to push me off of him the whole time. I continued to tell him to stop resisting".

Perez was "flailing his arms" and "using his legs to spin around on the ground" attempting to flee while Jensen's knees were still on the ground again. Jensen said "I have a Taser that I couldn't get to because he had my left arm". Jensen said he was trying to free himself from Perez's grip. "I also carry a large Streamlight flashlight in my sap pocket. I couldn't get to that". Jensen said he carries this in his left side pant sap pocket below the larger pocket and Perez had control of his left arm.

As Perez and Jensen continued to struggle, Perez was able to free his left arm from Jensen's hold. "He starts to roll to his right side in an attempt to stand up" (Exhibit 30). Jensen said he was still on top of Perez and he used his right hand to push on to Perez's shoulder to keep him down on the ground. Jensen's right hand was on Perez's shoulder area or chest. Perez still had control of Jensen's left hand. Jensen told the criminal investigators "As I am keeping him on the ground, waiting for cover to get there, I feel him pulling on my gun. And I know it's my gun

because I feel my holster moving on my leg. So when I felt that, I immediately reached back and I put my hand on the grip of my gun and it was on top of his hand. He had ahold of the grip of my gun.” Jensen said Perez had his left hand on his gun. He was pulling the gun toward his head in an upward motion. “He was pulling strong, pulling hard”.... “I pushed down on the grip of my gun in an attempt to keep it holstered so he could not pull it out and kill me with my own gun”.

During the Coroner’s inquest Jensen stated “So I then looked down and I see Mr. Perez’s left hand on the grip of my gun and he’s pulling the firearm. So he’s pulling my gun up. I could see the hood on my holder being stretched in a direction it’s not supposed to go. At that point, fearing that Mr. Perez was attempting to gain my firearm from my holster in an effort to kill me, I pushed back down on top of Mr. Perez’s hands to keep my firearm holstered”.

Jensen pulled his left arm away from Perez’s grasp and Jensen and Perez both started to stand up. Jensen’s decision to stand up was to distance himself from Perez. He said “As I am standing up, he is standing up and he is still holding on to my gun trying to pull it from my holster”. Jensen and Perez are still face to face. “Fearing that he was trying to take my gun to kill me, I pushed him back with my left hand. I hit him in the chest. It was enough to get him to break the grip on my gun. At that time I drew my gun from the holster out to about the retention position and he charged towards me. So when he charged towards me, I thought he was trying to come after my gun to take my gun away from me. So I fired one round”. Jensen said they were “a couple of feet” from each other. He said as Perez charged toward him Perez’s hands were coming towards Jensen and the only thing in front of Jensen was his gun. “I just got him free from my gun. He was trying to take it out of my holster. So he is going after my gun. So, believing he is going after my gun to take it from me to use it on me, I fired one round”. At the Coroner’s Inquest Jensen said “My concern was that Mr. Perez would attempt to take my firearm and use it against me to kill me”.

Jensen said he did not know if he hit Perez with the first round, but there was a pause. Perez did not back up. “He stood his ground. He was planted”. “After the first round I started to back up to distance myself”. “He (Perez) charged towards me again in the same manner. I fired a second round”.

Jensen distanced himself some more from Perez and fully extended his arm out toward Perez. “I pointed my gun at him again and I told him to stop. He charged again and that’s when I fired the third shot”. Jensen said he believes the third shot struck Perez in the chest because Perez grabbed his chest and bent over. Jensen distanced himself some more and observed Perez’s actions. Perez then stumbled into the store.

Jensen keyed his radio and said “shots fired” (Exhibit 28). He realized he was still on Channel 2. He switched to Channel 1 as he walked toward the entrance to the store and again informed

dispatch that shots were fired. Jensen walked into the store and saw blood drops on the ground. He followed the blood drops on the ground with his eyes and he saw Perez was down on the ground. He got on the radio and said that shots were fired and the subject was down and he requested an ambulance - Code 3 (Emergency response with lights and siren) (Exhibit 28).

Jensen said he stopped firing after the third shot "to assess the situation". Perez "stopped engaging me" and Jensen determined the threat had ended. Jensen said he never had control of the Perez. "I was afraid he was going to take my gun and kill me".

E. [REDACTED]

[REDACTED] She spoke with Richmond Police Sgt. Eric Smith and told him that she spoke with Perez on his most recent birthday [REDACTED] At that time Perez told her he would be dead in a year because all good Americans die by the time they turn twenty five. [REDACTED] told Sgt. Smith that Perez told other people that he would either die by a police officer or a gun and would forever be in a liquor store. [REDACTED] said that Perez struggled with anxiety and turned to chemical dependency.

F. 911 Call by Perez

During the incident, while Jensen was speaking with Officer Matsui on Channel 2, Perez called 911 with his cell phone [REDACTED] (Exhibit 28). The 911 recording memorializes Perez complaining about being arrested by Matsui. His speech is thick, mumbled and slurred. It is evident that Perez did not comprehend what the dispatcher was telling him. In the background one can hear Jensen speaking with Matsui on the radio. Jensen then asks Perez what is his last name. Perez replies "Perez, I'm being harassed". It sounds as if a scuffle ensues and Jensen tells Perez to sit down. The scuffle continues and the call ends.

G. [REDACTED] Video

[REDACTED] recorded three ten second segments of the incident with her cell phone (Exhibit 30). She posted each of these recordings on Snapchat, which is a social media application for photos and video recordings. The maximum time a video can be posted on Snapchat is ten seconds.

[REDACTED] recorded the first video from the driver's seat of her car. The first video is 9 seconds and depicts Perez laying on his back and Jensen on top of Perez. Jensen has his right knee on Perez's torso and he was trying to control Perez's hands. Perez is on his back and rolls onto his right side. His arms and legs are flailing and he is clearly resisting Jensen's arrest. At the last second (8 seconds) the video depicts Perez's left arm wrapped underneath and over the top of Jensen's firearm located on the right side of his equipment belt.

[REDACTED] recorded the second video while standing at the interior driver's door frame of her car. The second video is also 9 seconds long and depicts Jensen facing the front door of Uncle Sam's

with his back to [REDACTED] He has his firearm in his right hand and is backing up away from the front door. He appears to manipulate equipment on the left side of his equipment belt, possibly when he switched from Channel 2 to Channel 1. He then walked toward the front door and looked inside the store.

The third video is 9 seconds as well. The video depicts Jensen standing in the front door of Uncle Sam's. He is facing [REDACTED] and his back is toward Uncle Sam's. The listener can hear commotion from citizens at the scene. An unknown person approaches Jensen and Jensen tells him firmly "Back up!" and the person replies "I'm sorry". Then the listener can hear an unknown persons say "Why you do that man? Why you do that bro?" and another say "For reals? They shot him?" "Is he in there?" The listener can then hear sirens from police cars responding to the scene.

H. Uncle Sam's Liquor Store Closed Circuit Video

Richmond Police provided the Investigator with a copy of the closed circuit video camera system recording at the time of the incident (Exhibit 29). The Investigator was unable to play the recording due to not having the necessary computer program. During the criminal investigation it was revealed that the system has cameras inside the store, one of which is angled out the front of the door onto the sidewalk. The system does not have any external cameras which would have memorialized the struggle and shooting.

I. CAD Time Line

The Richmond Police Department Computer Aided Dispatch (CAD) Detail Call for Service Report (Exhibit 9) revealed the following time line for Officer Jensen's activity regarding this incident:

Date	H:M:S	Activity
9/14/14	12:12:01 AM	Jensen advises dispatch he will be out on a "10-59" at Uncle Sam's
9/14/14	12:14:05 AM	Jensen advises dispatch he is "out with one" Perez at Uncle Sam's
9/14/14	12:15:35 AM	Perez calls 911 while stopped by Jensen to complain about Matsui
9/14/14	12:16:00 AM	Jensen advises "shots fired"

2 minutes 4 seconds elapsed from the time Jensen went out on the "10-59" Security Check at Uncle Sam's to the time he advised he was out with Perez. 1 minute 30 seconds elapsed from the time Jensen was out with Perez until the time Perez called 911 to complain about Matsui and being "harassed". This is also the time that Perez attempted to leave Jensen and resist his arrest.

25 seconds elapsed from the time Perez called 911 and began to resist Jensen to the time Jensen advised "shots fired".

J. Shot Spotter

Shot Spotter is a gunfire data intelligence analysis system for law enforcement. Acoustic sensors are deployed in geographic areas that are designated by the law enforcement agency. The system detects gunfire and instantly notifies law enforcement of the gun shots and the approximate location with real-time data delivery to dispatch centers. The Richmond Police Department has subscribed to this intelligence analysis system since 2009.

On 10/02/14 Shot Spotter Lead Engineer, [REDACTED] submitted a forensic analysis report regarding this incident to the Richmond Police Department (Exhibit 10). On 09/14/14 at 12:15 AM Shot Spotter detected multiple gun shots near 3401 Cutting Blvd in Richmond:

- Shot 1 was at 12:15:46.1 (12:15 AM and 46.1 seconds)
- Shot 2 was at 12:15:46.6 (12:15 AM and 46.6 seconds)
- Shot 3 was at 12:15:47.2 (12:15 AM and 47.2 seconds)

According to the Richmond Police Department Computer Aided Dispatch report, Jensen advised he had been involved in a shooting at 12:16:00.

K. Criminal Investigation

Pursuant to Richmond Police Department Policy 310 – Officer Involved Shooting (Exhibit 5), all officer involved shootings are conducted by the Richmond Police Department in conjunction with the Contra Costa County District Attorney's Office. It is standard procedure within Contra Costa County that a law enforcement agency investigates officer involved shootings in conjunction with the District Attorney's Office. A complete copy of the criminal investigation is attached to this report (Exhibit 9).

L. Coroner's Inquest

On December 10, 2014 a Coroner's Inquest was held at Contra Costa County Superior Court; 21020 Ward Street, Martinez; Department 1. [REDACTED], an attorney, presided as the hearing officer. Coroner's Inquests are held in Contra Costa County any time there is a direct connection between a law enforcement agency and the death of a human being. A jury of 8 citizens is seated for the public hearing. They hear testimony and determine one of four modes of death is applicable to the case 1) Suicide; 2) Natural Causes; 3) Accident; and 4) At the Hands of Another.

In this case, the jury heard testimony from Richmond Police Officer Jensen; Richmond Police Detective Hector Esparza; Contra Costa County District Attorney Inspector Jeff Soler; and

Contra Costa County Pathologist Dr. Arnold Josselson. The jury reached a verdict that Perez died at the Hands of Another (Exhibit 11).

M. Autopsy, Cause of Death and Toxicology of Richard Perez

Arnold Josselson is a Medical Doctor who specializes in forensic pathology and testified at the Coroner's Inquest which the Investigator witnessed (Exhibit 11). He conducted an autopsy on Perez on September 15, 2014. Josselson said when an autopsy is conducted an external examination of the corpse is done, followed by an internal examination.

Josselson said the examination of the external surface of the body is for any injuries or natural disease process that may be present. He said Perez had a lot of blunt force injuries. A blunt force injury could be a bruise on the surface of the body, or an abrasion, which is a scraping of the skin on the surface of the body. He said Perez had quite a few blunt force injuries consistent with a physical altercation.

Josselson pointed out that there were bruises located on the right knee, left knee, right forearm, left forearm, right thigh, left ankle, and lower abdomen. Perez's body had scratches on the left shoulders, right ankle, right palm, right wrist, right thumb, right knee, right lower leg, left forearm. Josselson said that all of the blunt force injuries on Perez were consistent with injuries that were suffered during a physical altercation.

Josselson said that an internal examination occurs when he opens the body cavities and looks at all the organs to look for injuries and natural disease processes that may be present.

Josselson said he discovered three gunshot wounds to Perez's body. Two of the gunshot wounds were fatal and one was non-fatal. He explained that all three bullets went through the body, meaning the bullets entered and exited the body.

Josselson explained the first fatal gunshot wound. He said the bullet entered left chest, passed through the left chest cavity, passing through the left lung, and passing through the aorta in the chest. He said the aorta is the major blood vessel in the body and that it originates in the heart and supplies blood to the rest of the body. Josselson continued describing the trajectory of the bullet and said it next entered the right chest cavity, passing through the right lung. It then deflected off of a rib in the right chest cavity and went up through his right upper arm. Josselson said the path of the first bullet was left to the right, from front to back and in a downward direction.

Josselson next explained the second fatal gunshot wound. He said the bullet entered left chest laterally which means toward the outside. He said it travelled through the left lung, then entered the abdominal cavity, through the spleen, through the liver; exited the left side of the abdomen

through the lower part of the back. Josselson said the second bullet traveled from the left to right and front to back.

Josselson next explained the third gunshot wound which he said was non-fatal. He said it entered on the left side of Perez's abdomen, but did not enter the abdominal cavity. The bullet passed behind the right femur, which is the large bone in the leg and exited on the back of the right thigh. Josselson said the third bullet traveled left to right and front to back and in a downward path.

Josselson next testified that the cause of Perez's death was one gunshot wound to the chest and one gunshot wound to the chest and abdomen.

Josselson testified that Perez's toxicology at the time of his death included:

- Blood alcohol content of .247 which is three times the .08 level of someone to be driving under the influence of alcohol.
- Low level of Clonazepam which is used to treat seizures.
- Therapeutic level of Fluoxetine which is an antidepressant drug.
- Therapeutic level of Diphenhydramine which is Benadryl.

Josselson said a therapeutic level is a level one would expect on someone who takes the drug for a medical reason. Essentially, it is a person not abusing the drug.

N. Contra Costa County District Attorney Clearance Letter

At the conclusion of the criminal investigation Contra Costa County Deputy District Attorney Barry Grove reviewed the investigation. It is standard practice for the District Attorney's Office to review the investigation to determine if criminal charges should be filed against any of the involved parties, including the officer.

On January 20, 2015 Grove sent Richmond Police Chief Christopher Magnus a letter clearing Jensen of any criminal conduct and in fact opined that Jensen's actions constitute Justifiable Homicide as defines by California Penal Code Section 197 (Exhibit 12).

O. DNA

DNA stands for deoxyribonucleic acid and is the hereditary material in humans. DNA can be used to identify criminals with incredible accuracy when biological evidence exists.

On 09/30/14 Richmond Police Sgt. Eric Smith requested that Richmond Police Officer Grivetti conduct additional evidentiary work on Jensen's firearm. Smith requested Grivetti collect DNA swabs from Jensen's firearm. Grivetti collected three DNA samples using cotton tipped applicators and distilled water from the right and left sides of the grip and the base of the

ammunition magazine. The samples were booked into Richmond Police Department Evidence (Exhibit 9).

Richmond Police Lieutenant Brian Dickerson informed the Investigator that the DNA samples were not analyzed after collection due to cost prohibitive reasons.

P. Blood Draw

Richmond Police Department Policy 310.7 – Officer Involved Shootings; Administrative Investigation mandates that “Any officer involved in a shooting may be administratively compelled to provide a blood sample for alcohol/drug screening (Exhibit 5).

Richmond Police Lieutenant Brian Dickerson informed the Investigator that a blood sample was not collected from Jensen in this incident. Jensen did tell the criminal investigators that on the night of the shooting he was not on any medication that would impact his ability to perform as a peace officer.

Q. Citizen Personnel Complaints

Six citizens filed formal personnel complaints with the Richmond Police Department alleging that Jensen used excessive force in this incident (Exhibit 19). The citizens filing the complaints are:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

The Investigator called each of the citizens on January 6, 2015 to determine if they witnessed the incident or had any relevant information pertinent to the investigation. The Investigator found it highly suspicious that the handwriting and content on the complaints filed by [REDACTED] [REDACTED] were identical. It is evident that one form was filled out, copied and then signed by each individual citizen. It should be noted that [REDACTED], who was present leading up to and during the shooting, submitted a formal personnel complaint against Jensen. His address on the complaint form is the same address for [REDACTED] who also submitted a complaint form.

The Investigator spoke with [REDACTED] on January 6, 2015 at 10:15 AM. He told the Investigator he was not present during the shooting and had “no idea” what the Investigator was speaking about. He said he did not submit a formal personnel complaint to the police department

regarding Jensen's actions. He said [REDACTED], may have submitted a complaint using his name.

The Investigator received a voice mail message from [REDACTED] on January 7, 2015 at 8:26 AM. [REDACTED]

[REDACTED] She said she and [REDACTED] did not witness the shooting, but were very concerned that the Officer was put back on the street. She also expressed concerned about the officer's "lack of training"; his "emotional stability"; and his "actions toward a drunk unarmed man". She said she wrote out the complaint and [REDACTED] and [REDACTED] signed copied forms of the complaint.

[REDACTED] did not return my calls from the Investigator.

R. Officer Jensen's Assignments, Training, Equipment and Firearm Qualification

Jensen has been a police officer with the City of Richmond Police Department since 2007. He currently has a collateral duty as a Canine Officer, which he has held since January of 2012. He also has a collateral duty assignment as a member of the Crisis Negotiation Team, which he has held since 2013. Jensen was also a previous member of the department's Mobile Field Forces Unit from 2011 to 2012.

Jensen attended the Police Academy at the Napa Valley College Criminal Justice Training Center and successfully graduated in June of 2007. Jensen is a 2006 alumnus from San Francisco State University with a Bachelor of Art in Criminal Justice (Exhibit 13).

Jensen attended the Canine Patrol Course at Golden Gate Canine in December 2012. This training encompassed 200 hours of instruction on the use of a police canine (Exhibit 13). In addition, Jensen receives sixteen hours of additional canine training each month. The trainings occur on the first Thursday of each month, for 6 hours, and then on the third Thursday of each month, for 10 hours. The training covers different aspects of the use of the canine, handler protection, civil finds in which the canine finds a person but does not bite, narcotics training, article find training, door pops in which the handler deploys the dog remotely and they train on the use of canines during a pursuit.

Jensen has been on the Crisis Negotiation team since the summer of 2013 and he completed the Basic Hostage Negotiation training in March 2014. This is a 40 hour class sponsored and approved by the California Commission on Peace Officer Standards and Training. Jensen said the training covers "how to talk someone out of a bad situation". He said he learned to talk people down from potentially dangerous or stressful situations. He said it "could be domestic situation, barricaded subject, suicidal subject" or those that have fled from the police or avoiding arrest; armed or unarmed. He said the ultimate goal is to not use force and resolve the situation

peacefully while keeping everyone safe, including the subject whom the officer is talking to, citizens and the officers. Jensen said communication is a large part of the training.

Jensen received defensive tactics training while in the Napa Police Academy. He receives additional defensive tactics training from the Richmond Police Department every two years. He last received defensive tactics training a "few weeks before the shooting" (Exhibit 16). During that training he received training on performing "reap take down" tactics.

The Investigator spoke with Richmond Police Lieutenant Louie Tirona on 01/14/15. Tirona is the department's primary firearms and tactics instructor. Tirona said officers at the Richmond Police Department train with firearms monthly and qualify annually (Exhibit 6). They separate monthly training from annual testing of firearm proficiency. Tirona provided the Investigator with the most recent firearm training and qualification for Jensen which occurred on 08/23/14 (Exhibit 16). On that date Jensen qualified with his Wilson 1911 CQB which is the firearm Jensen used when he shot Perez. Tirona elaborated that the training portion of this session was a force on force training, which is scenario based. The officers use simmunition, which is non-lethal training ammunition, or air soft pistols. Officers are placed in role play situations and have to navigate through a given scenario and employ proper uses of force and decision making. Jensen passed this qualification and training.

Tirona told the Investigator that Jensen was carrying Winchester Jacketed Hollow Point 230 grain ammunition and was within department policy by carrying the ammunition.

Jensen told the Investigator that he attended Close Quarters Combat training in March or April of 2014. He said this was a ten hour training day conducted by the Richmond Police Department which he successfully passed (Exhibit 15).

Jensen told the Investigator that he received numerous hours of training regarding the use of deadly force at the Napa Police Academy. He estimated he received over forty hours of training at the academy. He has also received numerous hours of in-service training at the Richmond Police Department on the use of deadly force. When he was first hired at the Richmond Police Department he had to go through forty hour training course with a handgun and four hours with a shotgun. He has also attended two forty hour classes with the patrol rifle. This totaled eighty hours of training with the patrol rifle. Also has had use of force training in briefings.

Jensen said that when he was on the Mobile Field Force Team he attended in-service department training which covered use of force situations.

The Investigator asked Jensen based upon his training what is the threshold an officer must reach before he makes the decision to use deadly force. He replied "If my life or someone else's life is in danger".

The Investigator asked Jensen a series of questions regarding the equipment he was carrying on his duty belt on the night of the shooting. He said he was carrying ammunition magazines in holsters, four keepers and a baton ring, a Taser, two handcuff cases, police radio, a small Surefire flashlight, keys, firearm, firearm holster and pepper spray. He carried a Streamlight flashlight in his left sap pocket. He also has a "door pop" button on his belt which is a remote activation button to open the back door of his patrol car so his canine can get out of the car. Everything he was carrying was within department policy (Exhibits 2, 4, and 6).

The Investigator asked Jensen questions regarding specific less-lethal pieces of equipment on his equipment belt and his decision for not utilizing them as opposed to deadly force.

Jensen had a baton ring on his duty belt but was not carrying a baton. He said "Department policy at that time didn't require us to carry a baton" however, since the incident the policy changed. Deputy Chief Allwyn Brown issued an e mail on 10/7/14 requiring officer to carry an impact weapon. An impact weapon is a baton or an ASP (Armament Systems and Procedures) baton (Exhibit 3)

Jensen was carrying pepper spray as the chemical agent on his belt. He said he did not use his pepper spray during the struggle because he and Perez were too close together and it may not have been effective. He said if he had pepper sprayed Perez there was the chance it may have back splashed on to Jensen and contaminated him. He knows the effects pepper spray has on him and it would have impacted his safety.

Jensen was carrying his Taser on the left side of his duty belt. He was unable to retrieve the Taser while Perez was resisting arrest because Perez had a hold of his left hand. Jensen's Taser is set up for a left handed draw. He has it set up this way so he is unable to draw it with his right hand. This set up forces him to use his left hand to remove it. This is done intentionally and eliminates the chance of drawing his firearm accidentally instead of his Taser. Jensen told the Investigator that the Taser is not effective at close range. It is most effective at 21 feet. If he utilized the Taser at such a close range with Perez he could have been entangled inside the probes which would have incapacitated him.

Jensen was carrying his Streamlight flashlight in his left sap pocket. He was not able to access his Streamlight and use it as an impact weapon because Perez had a hold of his left arm.

Jensen had his canine partner, Axel, with him on duty on the night of the shooting however, he left him in the patrol car on this particular call. Jensen said he did not bring Axel with him on the call because "Per department policy (Exhibit 7) we are only allowed to deploy our dogs for felony crimes" or to give them a break or at a canine demonstration. "I had no reason to take him out of the car. I wasn't giving him a break, I wasn't doing a canine demonstration and I didn't have a felony crime to use him for."

Jensen told the Investigator that he did not call Axel for assistance as the situation escalated because there were people outside of the liquor store and he did not want to run the risk of anyone getting bit that had nothing to do with the incident. There was also the possibility that Jensen could have been bitten. He said his decision was based upon his training as a canine officer. He has a "door pop" button on his belt so the rear door of the patrol car opens and allows the dog to come out.

The Investigator asked Jensen why did he resort to the use of deadly force in this incident and not use a less lethal force option. He replied "The fact that he (Perez) was going for my gun and I was in fear for my life that he was going to try to take my gun and shoot me and kill me, that's why I went to lethal force." Jensen stated during the Coroner's Inquest that "once he (Perez) grabbed a hold of my gun, I was in fear for my life. So I was not going to use a less lethal option if he was trying to use lethal force on me".

S. Witness Statements Lacking Credibility

The Investigator reviewed statements made to the Criminal Investigators by [REDACTED] and [REDACTED] and determined that they lacked credibility.

[REDACTED] told Det. Haupt and Inspector Lewellyn that he saw Jensen pull his gun while Perez was on the ground, on his back with his arms up and yelling "No, no, no, no". He told Officer Mungia and Det. Haupt and Inspector Lewellyn that he saw Jensen stand over Perez and shoot him three times. [REDACTED] said he hid in front of 3320 Cutting Blvd. (Nancy's Nail Shop) and looked toward Uncle Sam's. He told Officer Mungia that he saw a white police officer with short black hair drag the body into Uncle Sam's Liquor store. However, he told Det. Haupt and Inspector Lewellyn that he saw two officers on scene and he saw one officer drag the body into the store.

There are no witnesses that support this statement and, in fact, statements from credible witnesses refute this account. Evidence from the criminal investigation does not support this statement and the autopsy performed by Dr. Josselson refutes Rincon's statement. Officer Mungia noted in his report that while standing in front of 3320 Cutting Blvd. one's view east of 3320 Cutting is obstructed by a concrete wall. He documented that [REDACTED] statement regarding seeing Jensen drag Perez into Uncle Sam's is impossible because Uncle Sam's located at 3322 Cutting and could not be seen where [REDACTED] was standing.

[REDACTED] provided a statement to Detective Eric Haupt and Inspector Dave Lewellyn. [REDACTED] said he spent numerous hours with Perez consuming alcohol and going to Uncle Sam's on two occasions preceding Perez's death. He recalled the brand of beer that Perez had in his hand when he arrived at [REDACTED] residence. He recalled that they ate a DiGiorno's pizza, chicken and rice. He recalls that he and his girlfriend consumed a twelve pack of beer. He

recalls helping Perez walk to Uncle Sam's due to Perez's level of intoxication. However, in [REDACTED] statement to the Investigators he suspiciously did not see Jensen and Perez engage each other nor did he hear any gun shots. [REDACTED] was present and handcuffed by a Richmond Police Officer at the scene. [REDACTED] physical appearance matched the description given by multiple witnesses as the person who approached Jensen while Perez was resisting arrest. [REDACTED] blamed his lack of recollection on his impairment due to being intoxicated.

VI. FINDINGS & ANALYSIS

In weighing the evidence, the general standard of proof was applied. An incident was found to have occurred if the preponderance of the evidence obtained during the investigation supported that conclusion. That is, it was more likely than not that an event happened. Credibility determinations were made where appropriate.

The following is a key to the terminology used in reaching findings:

SUSTAINED	When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.
NOT SUSTAINED	When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the employee.
EXONERATED	When the investigation discloses that the alleged act occurred, but the act was justified and/or proper under the City's policy.
UNFOUNDED	When the investigation discloses that the alleged act(s) did not occur or did not involve City personnel.

A. There is sufficient evidence to find that Officer Jensen complied with Richmond Police Department Policy 1046 -- Uniform Regulations while on duty on night of September 14, 2014.

Richmond Police Department Policy 1046 -- Uniform Regulations states "the uniform policy of the Richmond Police Department is established to ensure that uniformed officers will be readily identifiable to the public through the proper use and wearing of department uniforms" (Exhibit 8).

"Police officers on duty as Canine Officerspatrol officers assigned to a graveyard shift..... have the option of wearing the utility uniform as the duty uniform. Patrol officers assigned to shifts other than graveyard may substitute the Class B (Duty) uniform for the utility uniform when the respective work shift is during stormy weather conditions".

"The utility uniform shall have all markings required on the uniform duty shirt such as patches, secured badge holder, cloth name plate and optional service stars. These items shall be located on the utility uniform shirt. Equipment with the utility uniform shall be the same as required with the standard duty uniform such as uniform duty belt and safety vest. The utility uniform shall be clean, pressed and not noticeably wrinkled".

"The Department Shoulder Patch shall be worn on all regulation shirts and jackets. It shall be worn on both shoulders, placed approximately 1/2" below the shoulder seam.... The department issued badge, or an authorized sewn on cloth replica, must be worn and visible at all times while in uniform".

On 9/14/14 Jensen was wearing a standard Battle Dress Utility Uniform (BDU) for the Richmond Police Department and clearly identifiable as a Richmond Police Officer. A photograph was taken of him during the criminal investigation which depicts his appearance (Exhibit 9). All witnesses interviewed in this incident recognized Jensen as an on duty police officer.

Finding: EXONERATED

B. There is sufficient evidence to find that Officer Jensen complied with Richmond Police Department Policy 308 – Control Devices and Techniques while on duty on September 14, 2014

Richmond Police Department Policy 308.3 – Issuing and Carrying and Using Control Devices states "Control devices described in this policy may be carried and used by members of this department only if the device has been issued by the Department or approved by the Chief of Police or the authorized designee" (Exhibit 2).

Officer Jensen had a baton ring on his duty belt but was not carrying a baton. On 09/14/14 he was in compliance with this policy as the policy did not mandate he carry a baton. The wording "may be carried" allowed him the option not to carry the baton. Officer Jensen told the Investigator "Department policy at that time didn't require us to carry a baton" however, since the incident, the policy changed. Deputy Chief Allwyn Brown issued an electronic mail on 10/7/14 requiring officers to carry an impact weapon. An impact weapon is a baton or an ASP (Armament Systems and Procedures) baton (Exhibit 3).

Section 308.6 – Oleoresin Capsicum (C) Guidelines states

"As with other control devices, oleoresin capsicum (OC) spray and pepper projectiles may be considered for use to bring under control an individual or groups of individuals who are engaging in, or are about to engage in violent behavior" (Exhibit 2).

Jensen was carrying pepper spray as the chemical agent on his belt. Jensen did not use his pepper spray during the struggle because he and Perez were too close together and it may not have been effective. He said if he had pepper sprayed Perez there was the chance it may have back splashed on to Jensen and contaminated him. He knows the effects pepper spray has on him and it would have impacted his safety.

Finding: EXONERATED

C. There is sufficient evidence to find that Officer Jensen complied with Richmond Police Department Policy 309 – Conducted Energy Device while on duty on September 14, 2014

Richmond Police Department Policy 309 – Conducted Energy Device states “The Conducted Energy Device is intended to control a violent or potentially violent individual, while minimizing the risk of serious injury” (Exhibit 4). Section 309.5 – Use of the CED states

“The CED has limitations and restrictions requiring consideration before its use. The CED should only be used when its operator can safely approach the subject within the operational range of the device. Although the CED is generally effective in controlling most individuals, officers should be aware that the device may not achieve the intended results and be prepared with other options”.

Jensen was carrying his Taser on the left side of his duty belt. He was unable to retrieve the Taser while Perez was resisting his arrest because Perez had a hold of his left hand. Jensen’s Taser is set up for a left handed draw. He has it set up this way so he is unable to draw it with his right hand. This set up forces him to use his left hand to remove it. This is done intentionally and eliminates the chance of drawing his firearm accidentally instead of his Taser. Jensen told the Investigator based upon his training and experience the Taser is not effective at close range and is most effective at 21 feet. If he utilized the Taser at such a close range with Perez, he (Jensen) could have been entangled inside the probes which would have incapacitated him.

A review of Jensen’s training file reflects that Jensen was trained and tested on the proper use of the Taser (Exhibit 13).

D. There is sufficient evidence to find that Officer Jensen complied with Richmond Police Department Policy 312 – Firearms and Qualifications leading up to September 14, 2014

Richmond Police Department Policy 312 – Firearms and Qualification states “This policy establishes procedures for the acquisition, use, and documentation of training in the use of firearms” (Exhibit 6).

Section 312.2.1 – Duty Weapons states

"The authorized departmental issued handgun is the Glock Model 21SF, Glock Model 22, .40 or .45 caliber handgun. An officer may carry any other semi-automatic handgun as approved by the Primary Firearm Instructor (PFI) with the following conditions:

- (a) the handgun shall be of good quality and workmanship in the following calibers: .9mm, .40 S&W, or 45 A.C.P. (Exhibit 6).

Jensen was carrying a Wilson Combat CQB .45 caliber on 09/14/14. Richmond Police Lt. Louie Tirona is the Primary Firearms Instructor for the Richmond Police Department. He told the Investigator that Jensen was in compliance of departmental policy when carrying his personally owned Wilson Combat CQB firearm.

Section 312.2.2 – Ammunition states,

"Officers shall carry only department-authorized ammunition. Officers shall be issued fresh duty ammunition in the specified quantity for all department issued firearms during the officer's first scheduled qualification each year. Officers carrying personally owned authorized firearms of a caliber differing from department issued firearms shall be responsible for obtaining fresh duty ammunition in accordance with the above at their own expense.....The following ammunition is authorized for use:.....45 ACP, factory 230 grain JHP (standard velocity)...." (Exhibit 6).

Tirona told the Investigator that Jensen was carrying Winchester Jacketed Hollow Point 230 grain ammunition and was within department policy by carrying the ammunition.

Section 312.4 – Firearms Qualifications states

"All sworn personnel are required to qualify annually with their duty weapon.....on an approved range course. The Primary Firearm Instructor shall keep accurate records of qualifications, repairs, maintenance, training or as directed by the Training Sergeant. In addition to regular schedules, the Primary Firearm Instructor shall be responsible for providing all sworn personnel with regular practical training designed to simulate field situations" (Exhibit 6).

Lt. Tirona said officers at the Richmond Police Department train with firearms monthly and qualify annually (Exhibit 6). They separate monthly training from annual testing of firearm proficiency. Tirona provided the Investigator with the most recent firearm training and qualification for Jensen which occurred on 08/23/14 (Exhibit 16). On that date Jensen qualified

with his Wilson 1911 CQB which is the firearm Jensen used when he shot Perez. Lt. Tirona also provided the Investigator with a copy of the syllabus for this training (Exhibit 14).

Jensen attended "Close Quarters Combat" training on April 3, 2014. He said this was a ten hour training day conducted by the Richmond Police Department which he successfully passed (Exhibit 15).

Finding: EXONERATED

E. There is sufficient evidence to find that Officer Jensen complied with Richmond Police Department Policy 318 – Canine Program while on duty on September 14, 2014

Richmond Police Department Policy 318.2 – Guidelines for the Use of Canines states

"A canine may be used to locate and apprehend a suspect if the canine handler reasonably believes that the individual has either committed or threatened to commit any serious offense and if any of the following conditions exist:

(a) There is a reasonable belief that the individual poses an imminent threat of violence or serious harm to the public, any officer, or the handler.

(b) The individual is physically resisting or threatening to resist arrest and the use of a canine reasonably appears to be necessary to overcome such resistance.

(c) The individual(s) is/are believed to be concealed in an area where entry by other than the canine would pose a threat to the safety of officers or the public.

"It is recognized that situations may arise that do not fall within the provisions set forth in this policy. In any such case, a standard of objective reasonableness shall be used to review the decision to use a canine in view of the totality of the circumstances" (Exhibit 7).

Jensen had his canine partner, Axel, with him on duty on the night of the shooting however, he left him in the patrol car on this particular call. Jensen said he did not bring Axel with him on the call because "I had no reason to take him out of the car. I wasn't giving him a break, I wasn't doing a canine demonstration and I didn't have a felony crime to use him for."

Section 318.2.1 - Preparation for Utilizing a Canine, states

"A canine handler shall have the ultimate authority not to deploy the dog. The handler will evaluate each situation and determine if the use of a canine is technically feasible" (Exhibit 7).

Jensen evaluated the situation he was presented with and told the Investigator that he did not call Axel for assistance as the situation escalated because there were people outside of the liquor store and he did not want to run the risk of innocent citizens, who had nothing to do with the incident, being bitten. There was also the possibility that Jensen could have been bitten. He said his decision was based upon his extensive training as a canine officer.

Finding: EXONERATED

F. There is sufficient evidence to exonerate Officer Wallace Jensen regarding the allegation that he used excessive force against Richard Perez on September 14, 2014 and violated Richmond Police Department Policy 300 – Use of Force.

Richmond Police Department Policy 300.3 – Use of Force, states

"Officers shall use only that amount of force that reasonably appears necessary given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose.

"The reasonableness of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving" (Exhibit 1).

This section is consistent with the United States Supreme Court case of *Graham v. Conner* (1989) 490 U.S. 386 wherein the Supreme Court explained that an officer's right to use force is to be analyzed under the Fourth Amendment's "objectively reasonable" standard. In this ruling the Court cautioned that "the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight" (*Id.* 396).

Section 300.3.1 – Use of Force to Effect an Arrest states,

"Any peace officer may use reasonable force to effect an arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance on the part of the person being arrested; nor shall an officer be deemed the

aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest, prevent escape or to overcome resistance (Penal Code § 835)” (Exhibit 1).

Section 300.3.2 – Factors Used to Determine the Reasonableness of Force states,

“When determining whether to apply force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration, as time and circumstances permit. These factors include, but are not limited to:

- (a) Immediacy and severity of the threat to officers or others.
- (b) The conduct of the individual being confronted, as reasonably perceived by the officer at the time.
- (c) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, the number of officers available vs. subjects).
- (d) The effects of drugs or alcohol.
- (e) Subject's mental state or capacity.
- (f) Proximity of weapons or dangerous improvised devices.
- (g) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained.
- (h) The availability of other options and their possible effectiveness.
- (i) Seriousness of the suspected offense or reason for contact with the individual.
- (j) Training and experience of the officer.
- (k) Potential for injury to officers, suspects and others.
- (l) Whether the person appears to be resisting, attempting to evade arrest by flight or is attacking the officer.
- (m) The risk and reasonably foreseeable consequences of escape.
- (n) The apparent need for immediate control of the subject or a prompt resolution of the situation.
- (o) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others.
- (p) Prior contacts with the subject or awareness of any propensity for violence.
- (q) Any other exigent circumstances” (Exhibit 1).

On 09/14/14 Officer Jensen was conducting a field interview of Perez because Perez was causing a disturbance at Uncle Sam's. Jensen became aware that Perez had been involved in past criminal activity and arrested the previous evening by Richmond Police Officer Matsui. Jensen

told Perez he was being detained and was not free to leave. Perez chose to ignore Officer Jensen and began to walk away from him saying something to the effect of "screw this, I am leaving". During the Coroner's Inquest Jensen said he recalled Perez replying by saying "Fuck this. I'm out of here. I'm done".

Dr. Arnold Josselson testified that Perez had a blood alcohol content of .247 which is three times the .08 level of someone to be driving under the influence of alcohol. Perez also had a low level of Clonazepam, which is used to treat seizures; a therapeutic level of Fluoxetine, which is an antidepressant drug; and a therapeutic level of Diphenhydramine, which is Benadryl.

Officer Jensen told Perez to stop and sit down, but Perez refused to comply. Jensen used a reasonable level of force by utilizing a "reverse reaper take down". Perez resisted Jensen's arrest and a struggle ensued. Jensen was never able to overcome Perez's resistive actions. At one point Perez was able to get up and attempted to flee a second time. Jensen used reasonable force and utilized a "front reaper take down". Perez continued to resist Jensen's arrest. While Perez was resisting Jensen's arrest Perez was flailing his hands and arms and was rolling his body on the ground. Jensen told Perez several times to stop resisting his arrest and this was supported from statements made by [REDACTED]

[REDACTED] said he heard Jensen tell Perez approximately four times to "Stop resisting" and "Just stay down". [REDACTED] heard Jensen tell Perez in a firm voice to "calm down, calm down". She also heard Perez say "I am gonna flip you". [REDACTED] said she heard Jensen tell Perez to "be still". [REDACTED] said he saw Perez roll on to his left side and he heard Jensen say "Don't move. Don't try to fight me". [REDACTED] said she heard Perez tell Jensen "you're not going to arrest me" and heard Jensen say "don't resist, don't, stop resisting" twice. The video that [REDACTED] recorded clearly shows Perez resisting arrest by flailing his hands and arms and rolling on to his side while on the ground (Exhibit 30).

Perez continued to resist Jensen's arrest, and Jensen felt Perez pull on his gun located on his right side. During the Coroner's inquest Jensen stated "So I then looked down and I see Mr. Perez's left hand on the grip of my gun and he's pulling the firearm. So he's pulling my gun up. I could see the hood on my holster being stretched in a direction it's not supposed to go. At that point, fearing that Mr. Perez was attempting to gain my firearm from my holster in an effort to kill me, I pushed back down on top of Mr. Perez's hands to keep my firearm holstered". Jensen's statement is supported by accounts from [REDACTED] and the video recorded by [REDACTED]

[REDACTED] told Richmond Police Officer Therriault that he saw Perez grab Jensen's firearm. He told the criminal investigators that he believed Perez was getting the upper hand on Jensen as Perez was rolling onto his side and he saw Perez's hand was on the officer's side. He told the Investigators "I don't know if he was trying to get his gun or what but he was on his side".

The first video that [REDACTED] captured is 9 seconds long. At the 8th second it is clear that Perez had his left arm wrapped underneath and over the top of Jensen's firearm located on the right side of Jensen's equipment belt. The video ended and does not support Jensen's account that Perez was pulling up on his firearm. However, it clearly shows Perez's left hand on top of Jensen's firearm.

At this moment Jensen decided to stand up and to distance himself from Perez. As he did so Perez was still holding on to his gun according to Jensen. Jensen said "Fearing that he was trying to take my gun to kill me, I pushed him back with my left hand. I hit him in the chest. It was enough to get him to break the grip on my gun. At that time I drew my gun from the holster out to about the retention position and he charged towards me".

[REDACTED] supported Jensen's statement and told the criminal investigators that at this point Jensen backed up and Perez came toward the officer and Jensen fired his gun 3 times at Perez.

At this moment Jensen made the decision to use deadly force. Richmond Police Department Policy 300.4 – Deadly Force Applications states,

"Use of deadly force is justified in the following circumstances:

(a) An officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury" (Exhibit 1).

This section is consistent with United States Supreme Court case *Tennessee v. Garner* (1985) 471 U.S. 1, 3. In this case the Court ruled that a police officer is entitled to use deadly force only when "the officer has probable cause to believe that the suspect poses a significant threat of death or serious bodily injury to the officer or others."

Jensen said "I just got him free from my gun. He was trying to take it out of my holster. So he is going after my gun. So, believing he is going after my gun to take it from me to use it on me, I fired...." And at the Coroner's Inquest Jensen, said "My concern was that Mr. Perez would attempt to take my firearm and use it against me to kill me".

Jensen's actions were jointly investigated by the Richmond Police Department and the Contra Costa County District Attorney's Office. Deputy District Attorney Barry Grove reviewed the investigation and opined that Jensen's actions constituted Justifiable Homicide as defines by California Penal Code Section 197 (Exhibit 12).

Jensen was attempting to take an intoxicated subject into custody who was resisting arrest. He was alone, without the aid of other police officers, and believed his was in a fight for his firearm. The Investigator asked Jensen, based upon his training, what is the threshold an officer must

reach before he makes the decision to use deadly force. He replied "If my life or someone else's life is in danger".

The Investigator asked Jensen why did he resort to the use of deadly force in this incident and not use a less lethal force option. He replied "The fact that he (Perez) was going for my gun and I was in fear for my life that he was going to try to take my gun and shoot me and kill me, that's why I went to lethal force." Jensen stated during the Coroner's Inquest that "once he (Perez) grabbed a hold of my gun, I was in fear for my life. So I was not going to use a less lethal option if he was trying to use lethal force on me".

Officer Jensen received numerous hours of training in the disciplines of crisis negotiation, defensive tactics and use of force. Based upon his training and the circumstances he faced in this incident he made a reasonable decision to use deadly force in order to eliminate the threat he faced.

Finding: EXONERATED

VII. CONCLUSION

For the reasons explained above, the Investigator concludes that there is evidence to exonerate Officer Jensen from allegations that he used excessive force against Richard Perez on September 14, 2014 and violated the Richmond Police Department Policy 300 – Use of Force.